

FILED

2011 DEC - 1 PM 1:03

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

CLERK'S OFFICE  
U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

BY

as

**ELLEN L. FLEMING,**

**Plaintiff,**

-vs-

**Case No. A-10-CA-973-SS**

**DELL INC.,**

**Defendant.**

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**O R D E R**

BE IT REMEMBERED on this day the Court reviewed the file in the above-styled cause, and specifically the “Defendant’s/Counter-Plaintiff’s Motion for Partial Summary Judgment” [#34]; “Plaintiff’s Motion to Compel” [#39]; “The Plaintiff/Counter-Defendant Ellen L. Fleming’s Motion for Partial Summary Judgment” [#45]; “Defendant’s Motion for Summary Judgment” [#48]; “Dell’s Motion to Strike and Objections to Portions of Plaintiff’s Evidence to Dell’s Motion for Summary Judgment” [#66]; “Unopposed Motion for Leave to File Defendant’s First Amended Counterclaims and Third Amended Answer to Plaintiff’s First Amended Complaint” [#38]; “Unopposed Motion for Leave to File Plaintiff’s Second Amended Complaint” [#58]; and all responses and sur-responses and replies, and thereafter enters the following:

IT IS ORDERED that Fleming’s Motion for Partial Summary Judgment and Dell’s Motion for Partial Summary Judgment are DENIED without prejudice to the filing of Rule 50 motions at the appropriate time in trial. There appear to be evidentiary issues involved, for example, the reasons Fleming sent the proprietary information to her home computer

under the inspection and management of her husband as well as whether there was any detrimental result to Dell, Inc.

IT IS ORDERED that the plaintiff Fleming's Motion to Compel is DISMISSED without any objective ruling as the parties have resolved the issue for now.

The defendant Dell's Motion for Summary Judgment is DENIED without prejudice to the filing of a Rule 50 motion for judgment at the end of the presentation of the plaintiff's prima facie case. There appear to be evidentiary issues regarding validity of the filing of the complaint with the EEOC as well as alleged liability issues. These issues will be more clear (hopefully) from the testimony of witnesses and the exhibits than it is from hundreds of pages presented by both counsel.

Dell's Motion to Strike and Objections to Portion of Plaintiff's Evidence to Dell's Motion for Summary Judgment is DISMISSED AS MOOT, although the Court does state there were substantial reasons to sustain some of the objections therein. The objected materials, however, had nothing to do with this Court's decision to deny the motion for summary judgment.

The Unopposed Motion for Leave to File Defendant's First Amended Counterclaims and Third Amended Answer to Plaintiff's First Amended Complaint is GRANTED as is the "Unopposed Motion for Leave to File Plaintiff's Second Amended Complaint. In addition, if Dell, Inc. wishes to file an amended answer to the Plaintiff's Second Amended Complaint, it is authorized to do so.

SIGNED this the 30<sup>th</sup> day of November 2011.

  
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UNITED STATES DISTRICT JUDGE